

JAN 18 2013

A BILL FOR AN ACT

RELATING TO MEDICAL MARIJUANA.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

1 SECTION 1. The legislature finds that the State's medical
2 marijuana program was enacted into law in 2000 as a public
3 health program conceived out of compassion for the health and
4 welfare of the seriously ill. After twelve years, the
5 experience of the program indicates that improvements to the law
6 will help to fulfill its original intent by clarifying
7 provisions and removing serious obstacles to patient access and
8 physician participation.

9 The purpose of this Act is to amend the medical use of
10 marijuana law to address the concerns of Hawaii's seriously ill
11 patients.

12 SECTION 2. Chapter 329, Hawaii Revised Statutes, is
13 amended by adding three new sections to part IX to be
14 appropriately designated and to read as follows:

15 "§329- Transfers. A qualifying patient or primary
16 caregiver who is registered under section 329-123 may provide
17 usable marijuana or any part of the marijuana plant, including
18 the seeds, seedlings, or clones, to any other qualifying patient



1 or registered primary caregiver who is registered under section
2 329-123; provided that no consideration is paid for the
3 marijuana and that the recipient does not exceed the adequate
4 supply amount specified in section 329-121.

5 §329- Medical marijuana; transport. A qualifying
6 patient who is registered under section 329-123 and who
7 transports marijuana that is intended for medical use shall be
8 immune from searches, seizures, and prosecution for offenses
9 under part IV of chapter 712 while in the course of the
10 transport.

11 §329- Authorized conduct by a visiting qualifying
12 patient. For thirty days after entering the State, a qualifying
13 patient who is visiting from another jurisdiction that
14 authorizes the medical use of marijuana pursuant to a law
15 recognized by the department of health, and who possesses a
16 valid registry identification card, or its equivalent, and
17 photographic identification or a driver's license from that
18 jurisdiction, may engage in conduct authorized for a qualifying
19 patient under this part."

20 SECTION 3. Section 329-121, Hawaii Revised Statutes, is
21 amended as follows:



1 1. By adding a new definition to be appropriately inserted
2 and to read:

3 "Reimbursement" means consideration provided to primary
4 caregivers as compensation for costs associated with assisting
5 qualifying patients who are registered under section 329-123 to
6 obtain marijuana for medical use. Reimbursement shall not
7 include the sale of controlled substances."

8 2. By amending the definition of "adequate supply" to
9 read:

10 "Adequate supply" means an amount of marijuana jointly
11 possessed between the qualifying patient and the primary
12 caregiver that is not more than is reasonably necessary to
13 assure the uninterrupted availability of marijuana for the
14 purpose of alleviating the symptoms or effects of a qualifying
15 patient's debilitating medical condition; provided that an
16 "adequate supply" shall not exceed [~~three mature marijuana~~ ten
17 marijuana plants [~~, four immature marijuana plants, and one~~
18 ounce] and five ounces of usable [~~marijuana per each mature~~
19 plant.] marijuana at any given time."

20 3. By amending the definition of "primary caregiver" to
21 read:



1 ""Primary caregiver" means a person[~~7~~] eighteen years of
2 age or older, other than the qualifying patient and the
3 qualifying patient's physician, [~~who is eighteen years of age or~~
4 ~~older~~] who has agreed, with or without reimbursement, to
5 undertake responsibility for managing the well-being of the
6 qualifying patient with respect to the medical use of marijuana.
7 In the case of a minor or an adult lacking legal capacity, the
8 primary caregiver shall be a parent, guardian, or person having
9 legal custody."

10 4. By amending the definition of "written certification"
11 to read:

12 ""Written certification" means the qualifying patient's
13 medical records or a statement signed by a qualifying patient's
14 physician, stating that in the physician's professional opinion,
15 the qualifying patient has a debilitating medical condition and
16 the potential benefits of the medical use of marijuana would
17 likely outweigh the health risks for the qualifying patient.
18 The department of [~~public safety~~] health may require, through
19 its rulemaking authority, that all written certifications comply
20 with a designated form. The form may not require that the
21 signing physician be the qualifying patient's primary care
22 physician. The form may request the address of the location



1 where the marijuana is grown, but the information shall be
2 confidential and shall not appear on the registry card issued by
3 the department of health. "Written certifications" are valid
4 for only one year from the time of signing."

5 SECTION 4. Section 329-122, Hawaii Revised Statutes, is
6 amended by amending subsection (a) to read as follows:

7 "(a) Notwithstanding any law to the contrary, the medical
8 use of marijuana by a qualifying patient shall be permitted only
9 if:

- 10 (1) The qualifying patient has been diagnosed by a
11 physician as having a debilitating medical condition;
- 12 (2) The qualifying patient's physician has certified in
13 writing that, in the physician's professional opinion,
14 the potential benefits of the medical use of marijuana
15 would likely outweigh the health risks for the
16 particular qualifying patient; and
- 17 (3) The amount of marijuana possessed by the qualifying
18 patient and the primary caregiver does not exceed an
19 adequate supply."

20 SECTION 5. Section 329-123, Hawaii Revised Statutes, is
21 amended to read as follows:



1 "**§329-123 Registration requirements.** (a) Physicians who
2 issue written certifications shall [~~register the names,~~
3 ~~addresses, patient identification numbers,~~] provide, in each
4 certification, the name, address, patient identification number,
5 and other identifying information of the [~~patients issued~~
6 ~~written certifications with the department of public safety.~~]
7 qualifying patient. The information shall include the
8 physician's attestation that the qualifying patient has one of
9 the debilitating medical conditions defined in section 329-121,
10 but shall not name or describe the particular condition. If the
11 physician issuing the written certification is not the
12 qualifying patient's primary care physician, the issuing
13 physician shall send a copy of the written certification to the
14 qualifying patient's primary care physician, if any.

15 (b) Qualifying patients shall register with the department
16 of [~~public safety.~~] health. The registration shall be effective
17 until the expiration of the certificate issued by the department
18 and signed by the physician. Every qualifying patient shall
19 provide sufficient identifying information to establish the
20 personal identities of the qualifying patient and the primary
21 caregiver. Qualifying patients shall report changes in
22 information within [~~five~~] ten working days. Every qualifying



1 patient shall have only one primary caregiver at any given time.
2 The department shall [~~then~~] issue to the qualifying patient a
3 registration certificate[~~7~~] and may charge a reasonable fee not
4 to exceed \$35[~~7~~] per year.

5 (c) Primary caregivers shall register with the department
6 of [~~public safety.~~] health. Every primary caregiver shall be
7 responsible for the care of [~~only one~~] not more than five
8 qualifying [~~patient~~] patients at any given time.

9 (d) The department of health may require, pursuant to
10 rules adopted under chapter 91, that a registration be based on
11 information contained in a designated form completed by or on
12 behalf of a qualifying patient. The form shall only require
13 information from the applicant, primary caregiver, and
14 certifying physician, as specifically required or permitted by
15 this part.

16 [~~(d)~~] (e) Upon [~~an~~] inquiry by a law enforcement agency,
17 the department of [~~public safety~~] health shall verify whether
18 the [~~particular qualifying patient~~] subject of the inquiry has
19 registered with the department and may provide reasonable access
20 to the registry information for official law enforcement
21 purposes."



1 SECTION 6. If any provision of this Act, or the
2 application thereof to any person or circumstance, is held
3 invalid, the invalidity does not affect other provisions or
4 applications of the Act that can be given effect without the
5 invalid provision or application, and to this end the provisions
6 of this Act are severable.

7 SECTION 7. The department of public safety shall
8 facilitate the transfer of functions pursuant to this Act by
9 collaborating with, cooperating with, and assisting the
10 department of health with assuming jurisdiction of and
11 responsibility for the medical marijuana program as contained in
12 this Act.

13 In order to facilitate the transfer of functions pursuant
14 to this Act, until all relevant records are transferred to the
15 department of health, the duties of the department of public
16 safety shall include but not be limited to maintaining a
17 confirmation service of the registration and certification of
18 physicians, qualifying patients, and primary caregivers,
19 pursuant to section 329-123, Hawaii Revised Statutes, that is
20 full time, operating twenty-four hours per day and seven days
21 per week, and is accessible to the department of health.



1 SECTION 8. All rights, powers, functions, and duties of
2 the department of public safety relating to the medical use of
3 marijuana under chapter 329, part IX, Hawaii Revised Statutes,
4 are transferred to the department of health.

5 All officers and employees whose functions are transferred
6 by this Act shall be transferred with their functions and shall
7 continue to perform their regular duties upon their transfer,
8 subject to the state personnel laws and this Act.

9 All employees who occupy civil service positions and whose
10 functions are transferred to the department of health by this
11 Act shall retain their civil service status, whether permanent
12 or temporary. Employees shall be transferred without loss of
13 salary, seniority, retention points, prior service credit, any
14 vacation and sick leave credits previously earned, and other
15 rights, benefits, and privileges in accordance with state
16 personnel laws and this Act; provided that the employees possess
17 the minimum qualifications and public employment requirements
18 for the class or position to which transferred or appointed, as
19 applicable; and provided further that subsequent changes in
20 status may be made pursuant to applicable civil service and
21 compensation laws.



1 Any employee who, prior to this Act, is exempt from civil
2 service and is transferred as a consequence of this Act, may
3 continue to retain the employee's exempt status, but shall not
4 be appointed to a civil service position because of this Act.
5 An exempt employee who is transferred by this Act shall not
6 suffer any loss of prior service credit, any vacation and sick
7 leave credits previously earned, or other employee benefits or
8 privileges as a consequence of this Act; provided that the
9 employee possesses legal and public employment requirements for
10 the position to which the employee is transferred or appointed,
11 as applicable; and provided further that subsequent changes in
12 status may be made pursuant to applicable employment and
13 compensation laws. The director of health may prescribe the
14 duties and qualifications of such employees and fix their
15 salaries without regard to chapter 76, Hawaii Revised Statutes.

16 If an office or position held by an officer or employee
17 having tenure is abolished, the officer or employee shall not
18 thereby be separated from public employment, but shall remain in
19 the employment of the State with the same pay and classification
20 and shall be transferred to some other office or position for
21 which the officer or employee is eligible under the personnel



1 laws of the State as determined by the head of the department or
2 the governor.

3 SECTION 9. All appropriations, fees, records, equipment,
4 machines, files, supplies, contracts, books, papers, documents,
5 maps, and other personal property heretofore made, used,
6 acquired, or held by the department of public safety relating to
7 the functions transferred to the department of health shall be
8 transferred with the functions to which they relate.

9 SECTION 10. All rules, policies, procedures, guidelines,
10 and other material adopted or developed by the department of
11 public safety to implement provisions of the Hawaii Revised
12 Statutes which are reenacted or made applicable to the
13 department of health by this Act, shall remain in full force and
14 effect until amended or repealed by the department of health
15 pursuant to chapter 91, Hawaii Revised Statutes. In the
16 interim, every reference to the department of public safety or
17 director of public safety in those rules, policies, procedures,
18 guidelines, and other material is amended to refer to the
19 department of health or director of health as appropriate.

20 SECTION 11. All designated forms for written
21 certifications issued by the department of public safety shall



1 be valid under the department of health until the department of
2 health issues new designated forms.

3 SECTION 12. Statutory material to be repealed is bracketed
4 and stricken. New statutory material is underscored.

5 SECTION 13. This Act shall take effect on July 1, 2013.

6

INTRODUCED BY: Will Eyo

Amey de Paiva
James M. Stone



Report Title:

Medical Marijuana

Description:

Increases the amount of marijuana that constitutes an adequate supply by allowing a qualifying patient to possess 10 marijuana plants and 5 ounces of marijuana at any given time. Keeps confidential the site where marijuana is grown. Prohibits the DOH from requiring that a certifying physician be the patient's primary care physician. Prohibits certifying physicians from naming or describing a patient's particular debilitating condition. Increases the permissible ratio of patients to caregivers by allowing a caregiver to be responsible for the care of up to 5 patients at any given time. Allows transfer to another qualified patient and transport of medical marijuana without prosecution. Allows for recognition of visiting qualifying patients. Transfers departmental jurisdiction of the medical marijuana laws from PSD to DOH and requires PSD to assist with the transfer. Effective 07/01/2013.

The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.

